

ESTTA Tracking number: **ESTTA453406**Filing date: **01/27/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following parties request to cancel indicated registration.

Petitioner Information

Name	Hershey Chocolate & Confectionery Corporation		
Entity	Corporation	Citizenship	Delaware
Address	4860 Robb Street Suite 204 Wheat Ridge, CO 80033 UNITED STATES		

Name	Huhtamaki Finance B.V.		
Entity	Foreign corporation	Citizenship	Netherlands
Address	Jupiterstratt 102 Hoofddorp, 2132 HE NETHERLANDS		

Attorney information	Amy L. Wright Taft Stettinius & Hollister LLP One Indiana Square Suite 3500 Indianapolis, IN 46229 UNITED STATES efstabs@taftlaw.com Phone:317.713.3500		
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Registration Subject to Cancellation

Registration No	4083922	Registration date	01/10/2012
International Registration No.	NONE	International Registration Date	NONE
Registrant	Productos Zam-Fre, S.A. de C.V. Circonio #45, Col. El Manto MÃ©xico, DF, 09830 MEXICO		

Goods/Services Subject to Cancellation

Class 030. All goods and services in the class are cancelled, namely: Chocolate
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Grounds for Cancellation


Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	1677789	Application Date	01/28/1991
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Registration Date	03/03/1992	Foreign Priority Date	NONE
Word Mark	ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1931/03/24 First Use In Commerce: 1931/03/24 candy		

U.S. Registration No.	1268127	Application Date	08/27/1982
Registration Date	02/21/1984	Foreign Priority Date	NONE
Word Mark	ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1982/05/30 First Use In Commerce: 1982/05/30 Candy		

U.S. Registration No.	3076741	Application Date	04/18/2005
Registration Date	04/04/2006	Foreign Priority Date	NONE
Word Mark	ZERO		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1996/12/31 First Use In Commerce: 1996/12/31 Candy		

Attachments	73382275#TMSN.gif (1 page)(bytes) 78610647#TMSN.jpeg (1 page)(bytes) Notice of Opposition.pdf (11 pages)(679972 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Amy L. Wright/
Name	Amy L. Wright
Date	01/27/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

Hershey Chocolate & Confectionery Corporation and Huhtamaki Finance B.V. Petitioners vs. Productos Zam-Fre, S.A. de C.V. Defendant	Cancellation No. _____ Mark: CHOCOZERO Reg. No. 4083922
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PETITION TO CANCEL

Petitioners Hershey Chocolate & Confectionary Corporation and Huhtamaki Finance B.V. will be damaged by the continued registration of the trademark shown in U.S. Reg. No. 4083922 and hereby petition to cancel same. As grounds for this petition, Petitioners respectfully allege as follows:

1. Petitioner Hershey Chocolate & Confectionary Corporation (herein, “HCC”) is a corporation organized and existing under the laws of the state of Delaware, with an address of 4860 Robb Street, Suite 204 Wheat Ridge, Colorado 80033.

2. Petitioner Huhtamaki Finance B.V. (herein, “Huhtamaki”) is a body corporate organized and existing under the laws of the Netherlands, with a place of business at Jupiterstratt 102 2132 HE Hoofddorp, Netherlands.

3. Upon information and belief, Defendant Productos Zam-Fre, S.A. de C.V. (herein, “Defendant”) is a sociedad anonima (sa de cv) organized in Mexico with an address of Circonio #45, Col. El, Manto, México, DF 09830.

Petitioner's Trademarks

4. Huhtamaki is the owner of U.S. Reg. Number 1677789 for the word mark ZERO in connection with “candy” in International Class 30. *See* attached Exhibit A. This mark has been in use for more than 80 years, or since at least as early as March 24, 1931.

5. Huhtamaki is also the owner of U.S. Reg. Number 1268127 for the following ZERO design mark in connection with “candy” in International Class 30:



See attached Exhibit B. This mark has been in use for nearly 30 years, or since at least as early as May 30, 1982.

6. Huhtamaki is also the owner of U.S. Reg. Number 3076741 for the following ZERO design mark in connection with “candy” in International Class 30:



See attached Exhibit C. This mark has been in use for more than 15 years, or since at least as early as December 31, 1996.

7. These marks are collectively referred to herein as the “ZERO® Trademarks.”

8. HCC is a well-known candy manufacturer and is Huhtamaki's sub-licensee for ZERO® brand candy bars.

9. All three of the ZERO® Trademarks are valid and subsisting, unrevoked and uncanceled, in full force and effect, and incontestable pursuant to 15 U.S.C. § 1065.

10. The ZERO® Trademarks derive their protection and Petitioners obtained rights to these marks from continuous, uninterrupted, and deliberate use in the United States.

11. The ZERO® brand candy bar is a very well know product which is sold throughout the United States by all types of retailers and wholesalers, including but not limited to grocery stores, supermarkets, convenience stores, specialty shops, gift shops, five and dime/variety stores, office supply stores, big box retailers, toy stores, discount stores, warehouse stores, membership stores, online stores, drug stores, department stores, etc., etc.

12. Over the past eight decades, Petitioners have exercised care, skill and diligence in consistently providing high quality candy products in connection with the ZERO® Trademarks.

13. Consumers have come to associate the ZERO® trademark exclusively with candy originating from Petitioners and Petitioners alone.

The CHOCOZERO Registration

14. According to Patent and Trademark Office records, Defendant filed a federal trademark application, assigned Application Serial No. 85340356, for the word mark CHOCOZERO on June 7, 2011 in connection with “chocolate” in International Class 30. *See attached Exhibit D.*

15. Application Serial No. 85340356 became registered on January 10, 2012 and was assigned US Reg. No. 4083922. *See attached Exhibit E.*

16. The CHOCOZERO Registration was filed (and registered) nearly 80 years *after* Petitioners began using the ZERO® Trademark in United States commerce.

**The Continued Registration of the CHOCOZERO
Mark Will Cause Confusion**

17. Petitioners' mark is ZERO® and Defendant's mark is CHOCOZERO. The mark CHOCOZERO includes and encompasses 100% of Petitioners' ZERO® trademark.

18. The goods covered by the ZERO® Trademarks are identified as "candy" in International Class 30, which encompasses and includes "chocolate," which also falls within International Class 30 and is included in the CHOCOZERO registration.

19. Therefore, the use and registration of Defendant's CHOCOZERO mark is, and would be, confusingly similar to, and inconsistent with, Petitioners' superior rights in its ZERO® Trademark and ZERO® brand candy bars.

20. Petitioners' rights in its ZERO® Trademark predate Defendant's filing date by *eight decades*.

21. The dominant portion of Defendant's mark (ZERO) is identical to Petitioners' ZERO® Trademark, and given the direct overlap in goods, Petitioners consider Defendant's use and registration of its CHOCOZERO mark to be inconsistent with its superior rights.

22. Defendant is reaping the benefits of Petitioners' efforts.

23. The continued registration of Defendant's CHOCOZERO Registration is likely to cause confusion, mistake and/or deception among consumers as to the source of each party's goods in violation of 15 U.S.C. §1052(d).

24. Additionally, use of the CHOCOZERO mark will cause consumers to infer the existence of an affiliation, connection or association between the parties when none exists.

Accordingly, Petitioner respectfully requests that this Petition for Cancellation be sustained and that Defendant's US Reg. No. 4083922 be cancelled and stricken from the principal register.

Dated January 27, 2012.

Respectfully submitted,

/Amy Wright/

Amy L. Wright
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Petition for Cancellation was served by First-Class Mail, postage prepaid, upon the following, on January 27, 2012:

JOHN M. MURPHY
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EXHIBIT A

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,677,789
Registered Mar. 3, 1992

TRADEMARK PRINCIPAL REGISTER

ZERO

LEAF, INC. (DELAWARE CORPORATION)
2355 WAUKEGAN ROAD
BANNOCKBURN, IL 60015

FIRST USE 3-24-1931; IN COMMERCE
3-24-1931.

SER. NO. 74-134,098, FILED 1-28-1991.

FOR: CANDY, IN CLASS 30 (U.S. CL. 46).

JERRY L. PRICE, EXAMINING ATTORNEY

EXHIBIT B

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,268,127
Registered Feb. 21, 1984

TRADEMARK
Principal Register

ZERO

Hollywood Brands, Inc. (Delaware corporation)
100 S. Poplar
Centralia, Ill. 62801

For: CANDY, in CLASS 30 (U.S. Cl. 46).
First use May 30, 1982; in commerce May 30,
1982.
Owner of U.S. Reg. No. 284,982.

Ser. No. 382,275, filed Aug. 27, 1982.

ROGER KATZ, Examining Attorney

EXHIBIT C

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,076,741

Registered Apr. 4, 2006

**TRADEMARK
PRINCIPAL REGISTER**



HUHTAMAKI FINANCE B.V. (NETHERLANDS
CORPORATION)
AMSTERDAMSEWEG 206
1182HL AMSTELVEEN, NETHERLANDS

OWNER OF U.S. REG. NOS. 1,268,127 AND
1,677,789.

FOR: CANDY, IN CLASS 30 (U.S. CL. 46).

SER. NO. 78-610,647, FILED 4-18-2005.

FIRST USE 12-31-1996; IN COMMERCE 12-31-1996.

CHERYL CLAYTON, EXAMINING ATTORNEY

EXHIBIT D

Trademark Electronic Search System (TESS) - Windows Internet Explorer

http://tess2.uspto.gov/bin/showfield?f=doc&state=4005:k2gdn.2.1

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Record 1 out of 1

TARR Status **ASSIGN Status** **TDR** **TTAB Status** (Use the "Back" button of the Internet Browser to return to TESS)

CHOCOZERO

Word Mark	CHOCOZERO
Goods and Services	IC 030, US 046, G & S: Chocolate
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	85340356
Filing Date	June 7, 2011
Current Filing Basis	44E
Original Filing Basis	44E
Published for Opposition	October 25, 2011
Owner	(APPLICANT) Productos Zam-Fre, S.A. de C.V. sociedad anonima (sa de cv) MEXICO Circonio #45, Col. El Manto México, DF MEXICO 09830
Attorney of Record	John M. Murphy
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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Done Trusted sites Thursday, January 05, 2012

EXHIBIT E

United States of America
United States Patent and Trademark Office

CHOCOZERO

Reg. No. 4,083,922

Registered Jan. 10, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

PRODUCTOS ZAM-FRI, S.A. DE C.V. (MEXICO SOCIEDAD ANONIMA (SA DE CV))
CERRITOS 545, COL. EL MANITO
MEXICO, DF. MEXICO 09810

FOR CHOCOLATE IN CLASS 30 (U.S. CL. 46)

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF MEXICO REG. NO. 1129671, DATED 11-6-2009, EXPIRES 10-25-2019.

STR. NO. 85 340 356, FILED 6-7-2011

TINA BROWN, EXAMINING ATTORNEY



David J. Kappas

Verifying Official, United States Patent and Trademark Office